IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.11.2007

C O R A M :

THE HONOURABLE MR. JUSTICE ELIPE DHARMA RAO
and
THE HONOURABLE MR. JUSTICE S.R. SINGHARAVELU

W.P.NO.38863 OF 2003

K.T. Manimegalai ... Petitioner

..Vs..

1. The Government of Tamil Nadu rep.by its
Secretary, Social Welfare and Nutritious
Meal Programme Department
Fort St. George, Secretariat
Chennai-600 009.

2. The Director of Social Welfare
Nandanam, Chennai-600 035.

3. The Registrar
Tamil Nadu Administrative Tribunal
Chennai-600 104. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records from the file of the third respondent in O.A.No.344 of 1992 dated 15.7.2003 so far as it affects the petitioner and the orders of the second respondent vide proceedings in Rc.No.Admn.III(2)/45590/88 dated 20.3.1991 the order in O.A.No.344 of 1992, dated 15.7.2003 so far as not granting the monetary and other attendant benefits are concerned and the orders of the 1st respondent in proceedings vide G.O.(D)No.18, Social Welfare and Nutritious Meal Programme Department, dated 11.1.1991, as confirmed by the 3rd respondent and further direct the respondents to regularize the service of the respondent with effect from 1.11.1985, the date of initial appointment with all monetary benefits, seniority and all other attendant benefits. Prayer annexed as per order dated 18.08.2007 in WPMP.No.704/07 in WP.38863/03.

For Petitioner : Mr.B.S.Gnanadesikan
For Respondents : Mr.M. Dhandapani, Spl.G.P.

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O R D E R

(Order of the Court was made by Elipe Dharma Rao, J)

Aggrieved of the order passed of the Tribunal dated 15.7.2003 rejecting the monetary benefits to the petitioner, the present writ petition is filed.

2. The petitioner was appointed as Secondary Grade Teacher, Government Orphanage, Virudhunagar at the age of 33 years. As per the special rules framed under G.O.Ms.No.648 Rural Development and Local Administration Department dated 18.3.1967 the upper age limit prescribed for the post is 30 years. Though the writ petitioner has crossed the age limit, she was appointed and continued as such from 1985. The Director of Social Welfare department by letters dated 26.6.1989 and 9.9.1989 recommended for relaxing the age for regularisation of the services of the petitioner. The Government on consideration of the recommendation of the Director of Social Welfare dated 9.9.1989, by G.O.Ms.(D) No.18 dated 11.1.1991 relaxed the age of the petitioner by exercising the powers conferred under Rule 48 of the General Rules. Accordingly a consequential order was issued on 20.3.1991 relaxing the age of the petitioner and regularising her services in the category of Secondary Grade Teacher with effect from 11.1.1991 i.e. from the date of Government Order. Aggrieved of the above, the writ petitioner approached the Tribunal.

3. The Tribunal on consideration of the facts and circumstances of the case rejected the claim of the petitioner for monetary benefits, holding that her initial appointment was irregular; only on relaxation of her age, her services were regularised; for the purpose of pension only the earlier irregular service of the petitioner was taken into consideration and there is nothing illegal or improper in issuing the impugned Government Order. Aggrieved of the above, the present writ petition is filed.

4. Learned counsel for the petitioner relying on the orders issued by the Government from time to time as well as Rule 48 of the General Rules, which was subsequently amended by G.O.Ms.No.8/80, Education Department dated 2.1.1980 would contend that the upper age limit was extended up to 35 years. Further by G.O.Ms.No.112 Personal and Administrative Reforms (Personnel S) Department dated 27.12.1989 the said benefit was extended in respect of backward classes, Scheduled Castes and Scheduled Tribes. Learned counsel further submitted that the petitioner belonged to Backward community and in view of the amendment made to the General Rules and Special Rules of the Education Department, the petitioner is entitled for age relaxation from the date of her initial appointment. Learned counsel for the petitioner also brought to our notice G.O.Ms.No.820, Backward Classes Welfare, Nutrition Meal Programme and Social Welfare Department dated 23.9.1989, wherein it is directed that all orders issued by

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Education Department governing teaching profession should also be made applicable to the persons working in all schools under the control of Directorate of Social Welfare. Therefore, learned counsel for the petitioner would submit that, the concession or relaxation given as per the above G.O. is applicable to the petitioner, who is working in Social Welfare Department. Therefore the respondents ought to have regularised the services of the petitioner from the date of her initial appointment namely, from 1985 and not from the date of the Government Order, which is illegal and contrary to the Government Orders issued.

5. On the other hand learned Government Pleader contended that the Social Welfare Department is having its own Special Rules framed under G.O.Ms.No.648 Rural Development and Local Administration Department dated 18.3.1967 under which the age limit is restricted to 30 years and no amendment is made to this rule relaxing the age limit in respect of Social Welfare Department. Any relaxation made by the Government in respect of teachers working in Government Educational Department are not applicable to the Social Welfare Department. Therefore there is no illegality in the order passed by the Government dated 11.1.1991 relaxing the age of the petitioner and regularising her services from that date of that order.

6. We have carefully considered the submissions made by the learned counsel on either side and also went through the entire records. As rightly contended by the learned Government Pleader, under Rule 4 of the Special Rules framed under G.O.Ms.No.648 Rural Development and Local Administration Department dated 18.3.1967, the upper age limit prescribed as for appointment to the post of teacher 30 years. The petitioner is governed by the Tamil Nadu Educational Subordinate Service Rules. An amendment was made to the Special Rules by G.O.Ms.No.8/180 Education Department dated 2.1.1980 and as per the amended rule, the upper age limit for appointment to the post of Secondary Grade Teacher was increased from 30 to 35 years. Subsequently by G.O.Ms.No.112 Personnel and Administration Department, the said benefit was extended in respect of backward classes, scheduled castes and scheduled tribe. The present Government Order namely, G.O.(D).No.18 dated 11.1.1991 was issued under Rule 48 of the General Rules read with Rule 4 of the adhoc rules. Therefore we are unable to accept the contention raised by the learned Government Pleader that the Government Orders issued by the Education Department regarding age relaxation will not apply to the teachers working in Social Welfare Department.

7. In view of the above Government orders namely, G.O.Ms.No.8/80 Education Department dated 2.1.1980; G.O.Ms.820, Backward Class, Welfare and Nutritious Meal Programme and Social Welfare Department dated 23.9.1989; G.O.Ms.No.112 Personal and Administrative Reforms (Personnel S) department dated 27.12.1989 and also considering the order passed by this court in similar circumstances namely, W.P.No.9517 of 2005 dated 6.2.2006 we are of the view that regularising the services of the petitioner from the date of the Government Order is contrary to their own proceedings. The

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finding of the Tribunal that the initial appointment of the petitioner was irregular is contrary to the above said Government Order. As per the amended Rules the upper age limit for reserved categories of candidates for appointment to the post of teachers is 35 years and it has been given retrospective effect. Therefore it cannot be said that her initial appointment was irregular.

8. In view of our discussion referred to above and also following the earlier order of this court dated 6.2.2006 in W.P.No.9717 of 2005, this writ petition is allowed by setting aside the order of the Tribunal. The petitioner is entitled to be regularised from the date of her initial appointment. She is also entitled for all other consequential benefits. Consequently, the connected WPMP No.47083 f 2003 is closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Tr/

To:

1. The Government of Tamil Nadu rep.by its
   Secretary, Social Welfare and Nutritious
   Meal Programme Department
   Fort St. George, Secretariat
   Chennai-600 009.

2. The Director of Social Welfare
   Nandanam, Chennai-600 035.

3. The Registrar
   Tamil Nadu Administrative Tribunal
   Chennai-600 104.

1 cc To Mr.B.S.Gnanadesigan, Advocate, SR.66939.
1 cc To The Government Pleader, SR.07055.

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W.P. No.38863 of 2003
& connected WPMP

VRK(CO)
RVL 29.11.2007

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